S.B.Civil Misc. Appeal No.73/91
National Insurance Company Ltd. vs. Prem Chand & ors.

Date of Order: 03.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. L.D. Khatri for the appellant.
Ms. Rekha Borana for respondent no.1.

Heard learned counsel for the parties.

This appeal is against the award passed by the Workmen Compensation Commissioner, Bhilwara dated 31.8.1990 in claim case no.31/85.

It appears from the facts of the case that the claimant was truck driver employed by the non-applicant no.1 Chan Ram (respondent no.2). He met with accident and suffered injuries in his both the legs. The Tribunal held that he suffered the injuries in course of his employment and because of the accident he lost movement in his both the legs, therefore, he suffered injuries resulting into 100% loss of income. The victim was getting Rs.900 per month and, therefore, the victim was held entitled to compensation of Rs.42,000/-. The Tribunal also awarded penalty of Rs.8000/- in lump-sum along with interest and expenses. The Tribunal also held that the appellant-Insurance Company is liable to pay the total amount of Rs.50,000/- as awarded by award dated 31.1.1990. The appellant has challenged the award on the ground of quantum as well as on the ground that the appellant Insurance Company cannot be

held liable to pay the penalty and interest amount.

I considered the submissions of the learned counsel for the parties and perused the record also.

So far as question of employment of the claimant with respondent no.2 is concerned, that cannot be questioned as that question of fact has been decided by the Tribunal on the basis of the evidence available on record. So far as the quantum is concerned, normally the appellant Insurance Company has no right to challenge the quantum but in this case, the victim was driver of heavy motor vehicle and he suffered injuries in his both the legs and the learned Workmen Compensation Commissioner observed that he lost the total movement in his both the legs, therefore, the loss caused to the victim is upto 100% of his earning capacity. Otherwise also, the amount awarded to the victim of Rs.42,000/ cannot be said to be excessive in the facts of this case.

So far as award of penalty part is concerned, certainly the appellant Insurance Company cannot be held liable. The learned Workmen Compensation Commissioner has not calculated the interest part separately and has not awarded the penalty separately. Since the claimant suffered accident on 6.7.1983, therefore, he is entitled to interest at the rate of 12% per annum as per clause (a) of sub-section (3) of Section 4A of the Workmen Compensation Act, 1923 from 6.7.1983 till he received the payment in pursuance of the award dated

31.1.1990.The rest of the amount is penalty amount and, therefore, the appellant Insurance Company shall be entitled to recover the penalty amount only if paid by the appellant Insurance Company from the employer.

With the above modification, the appeal is allowed in part and the award passed by the Workmen Compensation Commissioner, Bhilwara dated 31.1.1990 is modified and it is held that the appellant Insurance Company is not liable to pay the penalty amount to the claimant-respondent no.1 and it is further held that the appellant-Insurance Company shall be entitled to recover the only penalty amount from the respondent in case the amount has been paid by the appellant Insurance Company to the claimant. No order as to costs.

(**PRAKASH TATIA),J.**

mlt.